IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1895 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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MAMJI ABDULMEMAN MOHAMMED YUSUF

Versus

DIRECTOR

Appearance:

1. Special Civil Application No. 1895 of 1998

MR IS SUPEHIA for Petitioner No. 1

MR AR SHAIKH for Petitioner No. 1

MR. M.K.DAGLI, AGP for Respondent No. 1

MR HJ NANAVATI for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/08/2002

ORAL JUDGEMENT

1. The petitioner had applied for admission to a

Homeopathic course and for that purpose he gave necessary application for enrolling him to the aforesaid Homeopathic course. The petitioner had initially applied for admission under the reserved category of O.B.C. The petitioner was placed at serial no.186 in the O.B.C. merit list prepared by the Department. At the time of procedure for admission, the petitioner was asked to produce creamy layer certificate for getting admission in the reserved seat meant for O.B.C.. For production of such certificate the petitioner was also given time, but unfortunately, he could not produce the said certificate in time. Thereafter, the petitioner was admitted to the aforesaid course in the high payment seat quota and he stood at general merit serial no.1162 and ultimately he was admitted to the said course at V.H. Dave Homeopathic Medical College, Anand. Accordingly, the petitioner started his education in view of the admission which he secured in the payment seat quota. Subsequently, the petitioner obtained the necessary certificate which is at Annexure "C", the certificate known as "O.B.C. certificate" which was granted to the petitioner on 6-12-1997. After obtaining the said certificate, application Annexure "B" was made on 10-12-1997 by the father of the petitioner and it was requested that since by then he had got the necessary certificate of O.B.C., the admission of the petitioner's son may be treated to have been enrolled under the O.B.C. quota as per the O.B.C. merit list at serial no.186 which was given to him at the initial stage when he applied for admission. Ultimately, since the decision with regard to admission was to be taken by the State Government, the petitioner's father was informed by the State Government by letter dated 27-1-1998 that as the required certificate had been obtained after a period of one year of enrolment to the course in the payment seat quota, it is not possible to accept the request made on behalf of the petitioner by his father that his admission should be considered as admission in the reserved category of O.B.C.

2. Being aggrieved by the said order of the State Government, the petitioner approached this Court in the year 1998 by way of this petition. It is prayed in the petition that decision of the State Government dated 27-1-1998 at Annexure "E" may be quashed and set aside and that the respondents may be directed to grant the petitioner admission on the basis of his placement in the merit list at serial no.186 in O.B.C.quota and to extend all the benefits including refund of fees etc. which was paid by him at the time of getting admission in the payment seat quota.

3. On behalf of the petitioner, Mr. Supehia has vehemently argued that in the facts and circumstances of the case, the respondents may be directed to refund the fees which the petitioner had paid at the time of admission in the payment seat quota. It is submitted that as the petitioner had subsequently produced the certificate of O.B.C. his admission should now be treated retrospectively as the admission in reserved category of O.B.C. and not in the general category in the payment seat quota. It is submitted by Mr. Supehia that since the petitioner really belongs to O.B.C. category, he was entitled to get admission in that category and whatever fees he had paid at the relevant time for admission in the payment seat quota should be refunded to him. The aforesaid arguments are resisted by the learned AGP Mr. M.K. Dagli and it is submitted by him that once the petitioner has accepted the admission in general category of payment seat quota, no relief can be given to the petitioner by way of treating his admission in the reserved category of O.B.C.

4. After hearing both the sides and considering the documents produced on record, I am of the view that the petitioner is not entitled to any relief whatsoever as prayed for in this petition. At this stage, the following points are required to be taken into consideration:

(i) That the petitioner had failed to produce necessary O.B.C. certificate at the relevant time before the College Authorities.

(ii) The petitioner thereafter requested the authorities to consider his case for admission in payment seat quota in general category.

(iii) The petitioner at his own volition obtained the admission in payment seat quota in general category and got himself admitted in the payment seat quota.

(iv) At the time of securing admission in the payment seat quota, the petitioner had not even informed the authorities that he is accepting the admission in that quota subject to his rights and contentions to enrol himself in the O.B.C.quota.

(v) The petitioner got himself admitted in the payment seat quota as back as on 18-12-1996 and after a considerably long time had applied to the authority requesting to treat his admission in

the reserved category of O.B.C and ultimately approached this Court by way of this petition in the year 1998.

(vi) The petitioner has now completed his course of study.

5. In view of the aforesaid factual position, in my view, the petitioner is not entitled to any relief from this Court in a petition filed under Article 226 of the Constitution of India. The petitioner at the relevant time having failed to submit necessary certificate which was demanded by the authorities as per rules, requested the authorities to give him admission in payment seat quota. He having voluntarily accepted this position on his own volition, now cannot approbate and reprobate and he cannot be allowed to say that his admission in the payment seat quota should now be treated as admission in the reserved category of O.B.C. Even the petitioner, at the time of getting admission in the payment seat quota, had not informed the authority that he was accepting the admission in that quota subject to his rights and contentions to get himself enrolled in the O.B.C. quota. In my view, having taken admission in the payment seat quota, now it is not open for the petitioner to request the authorities to consider his admission in the reserved category of O.B.C. It is not in dispute that by now the petitioner has already completed his education. Mr. Supehia has fairly stated that now this petition is restricted to the claim of repayment of the amount of fees which the petitioner has already paid at the time of securing admission in the payment seat quota. In any case, it cannot be said that the authorities committed any illegality at the relevant time in insisting upon the certificate from the petitioner. It is also an admitted fact that the petitioner could not produce any certificate at the relevant time as as required under the rules and he opted to secure admission in the payment seat quota. Under these circumstances, it would not be just and proper to grant any relief to the petitioner by directing the respondent-authorities to refund the amount of fees paid by the petitioner at the time of obtaining admission in the payment seat quota by treating his admission to be in the O.B.C. category, more so, when the petitioner has by now completed his study. Not only that, at the relevant time a candidate in the merit list, might have lost his admission in the payment seat quota in general category as in view of the admission of the petitioner atleast one candidate might have been left out of consideration from the payment seat quota. Even a genuine O.B.C. candidate who might have produced

necessary certificate might have been enrolled by the College in that quota.

6. Taking into consideration the aforesaid aspect, the petitioner, having voluntarily accepted admission in the payment seat quota in general category, now cannot pray for refund of the amount of fees paid by him and that too after having completed the course in the payment seat quota. The petitioner's request to treat him as a candidate in the reserved category of O.B.C. at this stage cannot therefore be accepted and the petitioner is now estopped from taking the aforesaid plea. On behalf of the State Government, affidavit-in-reply has been filed by the Administrative Officer and in paragraphs 5 and 6 of the affidavit-in-reply, it has been stated as under:

> "5. I say and submit that the petitioner failed to produce the said certificate. The said fact is also admitted by the petitioner in the petition. The petitioner voluntarily accepted admission in general category. The present petition is preferred after two years of having accepted the admission in the general category. Once having accepted the admission in the general category he cannot now seek admission in the reserved category as it would mean upsetting the admission already given. The admission process is long since over. Hereto annexed and marked Annexure II are copies of the applications made by the petitioner where endorsement is made by the Inspecting Officer that the OBC (non creamy layer) certificate is not enclosed.
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> "6. I say and submit that the petitioner having now obtained the OBC certificate cannot claim admission in the reserved category. The entire admission process is under the Central Admission system headed by the Central Admission Committee. The entire process is long since over and the petitioner after two years cannot now try and obtain admission in the reserved category. The same is against the admission policy and it would mean upsetting a lot of admissions earlier granted. The respondents

therefore pray that in view of the above mentioned facts and in the interest of justice the present petition be dismissed."

7. The petitioner, having taken advantage of getting admission in general category, now cannot take advantage of the aforesaid situation of getting necessary certificate at a later point of time. If the petitioner was really desirous of getting admission in the reserved category of O.B.C. , he could have taken appropriate steps at the relevant time, instead, he took the benefit of securing admission in the payment seat quota. Considering the circumstances as aforesaid and even otherwise, looking to the conduct of the petitioner, no relief can be granted to the petitioner in the petiton filed by him invoking the extraordinary jurisdiction of this Court. This Court is not inclined to direct the respondents to refund the amount of fees which the petitioner had already paid at the time of securing admission in the payment seat quota.

8. In the result, there being no substance in this petition, the same deserves to be dismissed and accordingly it is dismissed. Rule is discharged with no orders as to costs.

(P.B.Majmudar,J.)

stanley-pbm.